With respect I think he has misunderstood the provisions of section 27, namely:

"When any fact is deposed to as *discovered in consequence of information received* from a person accused of any offence in the custody of a police officer, *so much of such information*, whether such information amounts to a confession or not, as relates distinctly to the fact thereby discovered *may be proved*."

Section 27 clearly had no application in this case. Evidence of the discovery of the stolen property was admissible without having to invoke the section, the only purpose of which is to render self-incriminatory statements admissible if such statements can properly be regarded as information relating distinctly to the fact thereby discovered. The appellant was never alleged to have made any statement. Hence, negative evidence on this point must necessarily be held in his favour, because had he given any informa tion, such information should have been given in evidence by the police officer who heard it. Moreover, the appellant's evidence went unchallenged, as to his being brought to the beach by the police in their launch (nothing being said about his giving directions where to go), or as to the marker planted on the beach (obviously done by the assistant superintendent of police on the previous afternoon), or as to the tracks leading into the mangrove, which of course meant that no assistance from the appellant was required to lead the police to the whisky. All these facts were in favour of the appellant as wholly consistent with his innocence, but not for a moment was such evidence given even passing consideration. Before I conclude, I think it will be useful to remember the following observations of Divatia J. in *Chadavappa Pujari* v. *Emperor* [1] on section 27 of the Evidence Ordinance:

"In absence of any incriminating statement made by the accused leading to the discovery of property, its production alone from another man's property, would not be sufficient to establish the accused's possession. It may at the most show his knowledge that the property was concealed there. In my view, mere knowledge that stolen property is lying hidden somewhere is not an incriminating circumstance for the offence of theft or receiving stolen property, and such knowledge cannot by itself raise a presumption of possession. It is the prosecution that has to establish accused's possession apart from his knowledge, and it is only when his possession is proved that the accused has to account for it in order to escape from the presumption under Illustration (a) to section 114."

The appeal is allowed, the conviction quashed and the sentence set aside.

Appeal allowed.

Solicitors: *Dato' S. M. Yong & Co.*

WONG CHOP SAOW v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) December 6, 1964]

[Kota Bharu — Criminal Appeal No. 40 of 1964]

Gaming — Evidence — Expert witness — Mode of giving evidence.

To avoid confusion the expert witness should give his evidence as follows: He should first state his qualifications as an expert. He should then state that he has given evidence as an expert in such cases and that his evidence has been accepted by the courts. He should then proceed to describe the various documents and give his reasons why in his opinion they relate to characters lottery. The trial magistrate must then come to a finding that he either accepts or rejects the evidence of the expert witness *vis-a-vis* characters lottery.

MAGISTRATE'S CRIMINAL APPEAL.

Isahak bin Abdul Hamid for the appellant.

Tengku Ahmad Rithauddeen bin Tengku Ismail (Deputy Public Prosecutor) for the respondent.

Hashim J.: The appellant was charged under section 4(1)(c) of the Common Gaming Houses Ordinance 1953. He was found guilty, convicted and sentenced to a fine of $2,000 or 6 months imprisonment. He appealed against conviction and sentence.

Inche Isahak for the appellant submitted that the evidence of the expert witness was scanty and not sufficient for the learned magistrate to come to a finding whether the documents found related to 1000 characters lottery. I agree with Inche Isahak that the expert witness could have given his evidence more coherently and I allowed the appeal. However I found that taken as a whole there was sufficient evidence to warrant a retrial and I therefore directed that the case be retried before another magistrate.

May I, with respect, suggest that to avoid confusion the expert witness should give his evidence as follows. He should first state his qualifications as an expert. He should then state that he has given evidence as an expert in such cases and that his evidence has been accepted by the courts. He should then proceed to describe the various documents and give his reasons why in his opinion they relate to characters lottery. The trial magistrate must then come to a finding that he either accepts or rejects the evidence of the expert witness *vis-a-vis* characters lottery. In this case the trial magistrate did not come to any finding but merely stated what the expert evidence was.

The appeal is allowed. The conviction and sentence set aside and the case be retried before another magistrate.

Appeal allowed. Re-trial ordered.

Solicitors: *Isahak Hamid & Co.*